

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DENNIS MONTGOMERY,

Plaintiff.

V.

JAMES RISEN, HOUGHTON MIFFLIN  
HARCOURT PUBLISHING CO., HMH  
HOLDINGS, INC..

Defendant.

No. \_\_\_\_\_

DECLARATION OF MICAH J.  
RATNER IN SUPPORT OF  
MOTION TO COMPEL  
COMPLIANCE WITH  
SUBPOENAS

## NOTED ON MOTION

## **CALENDAR:** Friday December 25, 2015

## Oral Argument Requested.

MICAH J. RATNER declares as follows:

1. I am an attorney with the law firm of Davis Wright Tremaine LLP, attorneys of record for the defendants in the underlying matter herein. My business address is 1919 Pennsylvania Avenue NW, Suite 800, Washington, D.C. 20006-3401. I am over the age of 18, not a party herein, and make the statements in this declaration based on personal knowledge.

2. Plaintiff Dennis Montgomery brought an action in the U.S. District Court for the Southern District of Florida alleging libel and related tort claims against Pulitzer Prize-winning author James Risen and the other defendants arising from statements in Chapter 2 of Mr.

1 Risen's book, *Pay Any Price: Greed, Power, and the Endless War*. *Pay Any Price* is a nine-  
 2 chapter book that describes how the war on terror led to waste, fraud, and abuse by U.S.  
 3 government officials and the contractors who stood to gain from it. A true and correct copy of  
 4 Plaintiff's Amended Complaint is attached hereto as **Exhibit A**.

5       3. Chapter 2 of the book, titled "The Emperor of the War on Terror," focuses on  
 6 how, after the terrorist attacks of September 11, 2001, government officials were willing to  
 7 accept any intelligence – no matter how suspect – that might prevent the next terrorist attack.  
 8 The book reports allegations that Montgomery perpetrated a fraud on the federal government  
 9 by offering it intelligence gleaned from bogus software – allegations widely published in  
 10 articles as far back as 2008 that have never previously been challenged in a libel claim. Risen  
 11 recounted Montgomery's involvement with two businesses that were contractors to the federal  
 12 government, eTreppid and Blxware. Those companies were based in Nevada and Bellevue,  
 13 Washington, respectively. For the chapter, Risen interviewed Montgomery by phone and email  
 14 while Montgomery lived in California and/or Washington. Montgomery was a resident of  
 15 Washington at the time Risen's book was published in October, 2014.  
 16

17       4. Defendants' research and discovery have revealed that Montgomery lives in  
 18 Washington, not Florida as he claims, and Defendants have accordingly moved to dismiss or  
 19 transfer the litigation. For example, Montgomery acknowledged in his deposition that although  
 20 he claims to be domiciled in a rented room in Florida, he has never slept there or paid rent for  
 21 the room. A true and correct copy of excerpts of Dennis Montgomery's Aug. 20, 2015,  
 22 deposition is attached hereto as **Exhibit B**. A true and correct copy of Defendants' Motion to  
 23 Dismiss or Transfer, except exhibits, is attached hereto as **Exhibit C**. A true and correct copy  
 24 of Defendants' Notice of Supplemental Authority Concerning Defendants' Mot. to Dismiss,  
 25 except exhibits, is attached hereto as **Exhibit D**.

1       5.       Montgomery listed his son-in-law, Istvan Andras Burgyan, as a trial witness  
 2 when the parties exchanged final witness lists on August 12, 2015. In his witness list,  
 3 Montgomery provided as Burgyan's contact address the address of District of Columbia office  
 4 Plaintiff counsel, Larry Klayman, or "c/o at 2020 Pennsylvania Ave. #800, Washington, DC  
 5 20006." A true and correct copy of Plaintiff's Witness List, with Plaintiff's and his wife's  
 6 purported Florida address redacted at Plaintiff's request under the applicable protective order,  
 7 is attached hereto as **Exhibit E**.

8       6.       Burgyan worked with Montgomery for several years at Blxware, as  
 9 demonstrated in a LinkedIn.com profile in Burgyan's name, and as Montgomery acknowledged  
 10 in his deposition of August 20, 2015. A true and correct copy of the LinkedIn.com profile is  
 11 attached hereto as **Exhibit F**. A true and correct copy of excerpts of the transcript of Dennis  
 12 Montgomery's Aug. 20, 2015, deposition is attached hereto as **Exhibit G**.

13       7.       On Sept. 18, 2015, Defendants asked Montgomery's counsel, Larry Klayman, to  
 14 accept service on Burgyan's behalf, noting that Klayman put his own office address as  
 15 Burgyan's contact address. A true and correct copy of Defendants' email to Klayman is  
 16 attached hereto as **Exhibit H**. During a September 21, 2015 meet-and-confer telephone call,  
 17 Klayman said he did not represent Burgyan and refused to accept service on his behalf.

18       8.       On October 9, 2015, Defendants attempted to personally serve Burgyan at his  
 19 condo in Sammamish. A blonde-haired woman about 35 to 45 years of age answered the door  
 20 and told the process server that he had the wrong address. The process server later determined,  
 21 after studying photographs of Burgyan and his family published to a public website, that the  
 22 woman mostly likely was Burgyan's wife, Kathleen. A true and correct copy of the process  
 23 server's Affidavit of Non-Service is attached hereto as **Exhibit I**.

1       9.       On October 14, 2015, Defendants again asked Klayman via email on to accept  
 2 service on Burgyan's behalf. Klayman again refused. A true and correct copy of the Oct. 14,  
 3 2015, email from Defendants' counsel to Mr. Klayman is attached hereto as **Exhibit J**.

4       10.      On October 22, Defendants found pictures of Burgyan and his family on a  
 5 public website with their names on it. That day, Defendants sent the picture to the process  
 6 server company. The original process server, Eric Traina, said the blonde woman who told  
 7 him it was the wrong address was mostly likely Kathleen Burgyan.

8       11.      On October 22 and 23, 2015, Defendants' process server repeatedly tried to  
 9 serve the subpoena at Burgyan's Sammamish home. For example, although the light was on,  
 10 no one answered the door. A true and correct copy of the Affidavit of Non-Service is attached  
 11 as **Exhibit K**.

13       12.      On October 23, 2015, another process server, Timothy Peterson, again attempted  
 14 to serve Burgyan at his Sammamish home. Kathleen Burgyan answered the door and spoke in  
 15 an apparently fake French accent. After the server showed her a photograph of the family  
 16 Defendants had obtained from a public website, Burgyan confirmed her identity and Peterson  
 17 left the subpoena. A true and correct copy of the Affidavit of Service is attached as **Exhibit L**.

19       13.      On October 26, 2015, Plaintiff's counsel Larry Klayman accused Defendants'  
 20 counsel by email of harassing Montgomery's family – despite Klayman's prior insistence he  
 21 did not represent Burgyan and refusal to accept process on their behalf. A true and correct  
 22 copy of Klayman's email to Defendants' counsel is attached as **Exhibit M**.

24       14.      On November 2, 2015, Defendants received a facsimile cover sheet from  
 25 Burgyan that objected to the subpoena. It read, in part: "I am objecting to your attempt to  
 26 subpoena me on the basis of insufficiency of service of process and relevancy [sic]. Based on

1 these objections, I will not appear.” A true and correct copy of the objection is attached as  
 2

3 **Exhibit N.**

4 15. On November 4, 2015, Klayman alleged in the Florida District Court that  
 5 Defendants had harassed the Burgyans while serving the subpoena; Klayman asked the judge to  
 6 sanction the Defendants accordingly. Magistrate Judge Jonathan Goodman rejected the request  
 7 – noting that the Burgyans had apparently relied on subterfuge to evade service: “I am not  
 8 going to issue that request at all because, quite frankly, . . . it sounds like your client’s son-in-  
 9 law, or perhaps I should say his daughter, was involved in some fairly blatant dramatic efforts  
 10 to avoid service, to evade service such as adopting a phony French accent and denying that this  
 11 was, in fact, her house, et cetera.” A true and correct copy of the transcript of Discovery  
 12 Hearing Proceedings is attached as **Exhibit O.**

13 16. On November 4, 2015, Defendants issued a new subpoena to Burgyan noticing  
 14 the deposition and date to produce documents for 9 a.m. on November 19, 2015, at Defendants’  
 15 counsel’s Seattle office. A true and correct copy of the November subpoena is attached as  
 16

17 **Exhibit P.**

18 17. On November 5, 2015, Defendants’ process server personally served on  
 19 Burgyan the subpoena and witness fee of \$50.35. The process server attested: “[A]t 7:17 A.M.  
 20 on November 5th, 2015, at 4425 Issaquah Pine Lake Road Southeast, Unit A-31, Sammamish,  
 21 Washington, I duly served the above-described documents in the above-described matter upon  
 22 Istvan Andras Burgyan, by then and there personally delivering a true and correct copy thereof  
 23 by leaving the same with John Doe, believed to be Istvan Andras Burgyan, also known as Ish,  
 24 being a Caucasian male, approximately 35 to 40 years old, 6’1, and 180 to 200lbs.” The  
 25 process server had the photographs of Burgyan. The process server “observed Istvan Burgyan  
 26 and his family, who all matched the photographs I had, exit the residence and walk toward a  
 27

1 white SUV.” The server “walked up and asked, ‘Ish?’ to which John Doe replied, ‘Huh?’ and  
 2 turned to face” the process server. “Once he saw the documents in [the process server’s] hand  
 3 he stated, ‘That’s not me,’ and his wife immediately and simultaneously said the same.” The  
 4 process server “stated that these documents were for him and placed the documents on the roof  
 5 of the white SUV.” A true and correct copy of the Affidavit of Service, with the portion of the  
 6 picture of the minor child redacted, is attached as **Exhibit Q**.

7 18. On November 16, 2015, Burgyan objected via a facsimile cover sheet to the  
 8 November 4, 2015, subpoena. A true and correct copy of the objection is attached as **Exhibit**  
 9 **R**.

10 19. On December 4, 2015, counsel for Defendants sent Burgyan an email requesting  
 11 a Civil Rule 37(a)(1) discovery conference to discuss his objections. In the letter, Defendants  
 12 notified Burgyan that Defendants would file on December 7, 2015, a motion to compel  
 13 discovery responses, unless Burgyan first agreed to a meet-and-confer conference. A true and  
 14 correct copy of the letter to Burgyan is attached as **Exhibit S**. Burgyan refused to confer. In a  
 15 facsimile transmitted on December 7, 2015, Burgyan wrote: “I am objecting to your letter . . . .  
 16 Your demands I appear to for [sic] a deposition is nothing more than harassment to me and my  
 17 family. It is my understanding discovery was closed in the Risen matter on November 19,  
 18 2015. Your threat to take me to court appears to be baseless.” A true and correct copy of the  
 19 letter to Burgyan is attached as **Exhibit V**.

20 20. Defendants also sent Klayman a copy of their meet-and-confer letter to Burgyan.  
 21 In response, Klayman sent Defendants’ counsel an email on December 4, 2015, that reiterated  
 22 that he does not represent Burgyan. He also challenged the propriety of Defendants’ actions.  
 23 A true and correct copy of the email is attached as **Exhibit T**.

1       21. Discovery in this litigation closed on November 19, 2015. The subpoena against  
2 Burgyan is one of two discrete avenues of discovery that Defendants continue to pursue – both  
3 of which were noticed and served before the discovery deadline. By contrast, Plaintiff has  
4 moved to broadly extend the discovery deadline to December 19, 2015. While Defendants do  
5 not oppose Plaintiff's completion of discovery that has been noticed and properly served before  
6 the November 19 discovery deadline, Defendants oppose Plaintiff's motion, arguing, among  
7 other things, that Plaintiff has not demonstrated good cause. A true and correct copy of the  
8 Defendants.' Response in Opposition to Plaintiff's Motion for Extension of Time to Reset  
9 Discovery Deadline, except exhibits, is attached as **Exhibit U**. Plaintiff's motion is pending.  
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1 I declare under penalty of perjury that the foregoing is true and correct.  
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Executed this 7th Day of December, 2015, in Washington, D.C.



Micah J. Ratner

**DECLARATION OF SERVICE**

I hereby declare under penalty of perjury under the laws of the State of Washington that on this day I caused a copy of the foregoing Declaration to be served upon the following counsel of record:

Istvan Burgyan (X) By U. S. Mail  
4425 Issaquah Pine Lake Road Southeast ( ) By E-Mail  
Apt. A31 ( ) By Facsimile  
Sammamish, WA 98075-6255 ( ) By Messenger

### *Nonparty Respondent*

Larry Klayman (X) By U. S. Mail  
KLAYMAN LAW FIRM (X) By E-Mail  
2520 Coral Way, ( ) By Facsimile  
Suite 2027 ( ) By Messenger  
Miami, FL 33145  
leklayman@gmail.com

*Attorney for Plaintiff*

Brian Toth	(X)	By U. S. Mail
Sanford Lewis Bohrer	(X)	By E-Mail
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*Attorney for Defendants*

DATED this 12 day of December, 2015.

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By   
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